

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1997 SESSION

<p>FILED</p> <p>January 13, 1998</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

DANIEL THOMAS HILL,)
)
Appellant,) C.C.A. No. 01C01-9704-CR-00141
)
V.) Davidson County
)
STATE OF TENNESSEE,) Honorable Seth Norman, Judge
)
Appellee.) (Post-Conviction)
)
)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

The appellant, Daniel Thomas Hill, pled guilty to aggravated rape and armed robbery on September 30, 1985. On August 27, 1996 he filed a pro se petition for post-conviction relief, alleging six grounds for relief. On October 30, 1996 the trial court entered an order dismissing the petition, finding that grounds one through five in the petition were time barred and that issue six, regarding a defective indictment, was without merit.

In his brief, the appellant states that there are three issues for our review: (1) whether the trial court erred by holding that he was not entitled to relief from a fatally defective indictment; (2) whether his guilty plea was voluntary; and (3) whether the trial court erred in holding that he was not denied effective assistance of counsel. However, the appellant addresses only one issue in his brief: whether his indictment was fatally flawed for not alleging a mens rea, citing State v. Hill, 954 S.W.2d 725 (Tenn. 1997).

The state insists that the trial court did not err. It argues that the only issue on appeal is whether the trial court erred in rejecting the appellant's claim that the indictment was invalid. The state argues that the indictment dated April 24, 1985 charged the appellant with unlawfully and "feloniously" engaging in the sexual penetration of the victim and is therefore distinguishable from Hill.

Despite his reference to two other issues in his brief, the appellant's only issue on appeal appears to be whether his indictment was flawed. In its order dismissing the appellant's petition for post-conviction relief, the trial court found that the use of "feloniously" satisfied the mens rea requirement, and the trial court then dismissed the appellant's petition for post-conviction relief without a hearing.

We agree with the lower court's judgment that the appellant's indictment was valid, and we affirm the dismissal of the petition for post-conviction relief pursuant to Rule 20 of the Rules of the Court of Criminal Appeals.

PAUL G. SUMMERS, Judge

CONCUR:

JOSEPH B. JONES, Presiding Judge

WILLIAM M. BARKER, Judge